REMARKS/ARGUMENTS

Petition is hereby made under the provisions of 37 CFR 1.136(a) for an extension of two months of the period for response to the Office Action. Authorization to charge the prescribed fee to our deposit account is enclosed.

Claim 37 has been amended to introduce therein the protein profile of claim 38, with that profile being deleted from claim 38. In addition, it has been clarified that the protein content percentages of the canola protein isolate is determined on the basis of N x 6.25 on a dry weight basis. This recitation is consistent with claims 1 and 2 as originally filed.

The Examiner rejected claims 37 to 39 under 35 USC 102(a) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over WO 03/088760. Reconsideration is requested having regard to the amended form of the claims and the remarks herein.

Claim 37 now defines a feed composition for aquaculture comprising a canola protein isolate having a protein content of at least about 90 wt% (N x 6.25) d.b. and a canola protein profile which is:

about 40 to about 50 wt% of 2S canola protein
about 50 to about 60 wt% of 7S canola protein
about 1 to about 5 wt% of 12S canola protein

As the Examiner states, WO 03/088760 describes a canola protein isolate having a protein content of at least about 90 wt% (N x 6.25) on a dry weight basis and which has a protein profile which is about 60 to about 98 wt% of 7S protein, about 1 to about 15 wt% of 2S protein and 0 to about 25 weight percent of 12S protein. The Examiner asserted that this composition reads on the protein profile as previously claimed in claim 37.

However, with the incorporation of the protein profile of claim 38 into claim 37, the composition described in WO 03/088760 no longer overlaps with the

composition claimed in claim 37, as can be seen from the following comparison Table:

	Claim 37	WO 03/088760
7S	about 50 to about 60 wt%	about 60 to about 98 wt%
2S	about 40 to about 50 wt%	about 1 to about 15 wt%
12S	about 1 to about 5 wt%	about 0 to about 25 wt%

Accordingly, it is submitted that claim 37, as amended, is not anticipated by WO 03/088760.

In the Final Action, the Examiner stated that:

> "Since claim 38 depends from claim 37, then this claim is anticipated as well",

implying that claim 37 as now amended remains anticipated. There is no such principle of claim interpretation. A dependent claim limits to scope of the claims on which it depends and hence if the independent claim is anticipated, it does not follow that a narrower scope claim is necessarily also anticipated. It has been demonstrated above that the protein profile of claim 38 now present in claim 37, is not anticipated by protein profile disclosed in WO 03/088760.

The Examiner further comments in the Final Action that:

> "The claims are being rejected under both statutes of 35 USC 102 and 103 because the protein profile disclosed is not exactly the same and even if it were not the same, it would still be obvious over the patented product, because it is the protein isolate that is being claimed and the profile is being used to describe it insofar as applicant has found means to differentiate and name its various components."

It is submitted that claim 37 as amended is not rendered obvious by the disclosure of WO 03/088760. The different protein profiles between what is claimed in claim 37 and what is described in WO 03/088760 mean that they are proteins having differing properties based on the respective protein profiles. WO 03/088760 describes how to obtain a canola protein while having the protein profile discussed therein. There is no

procedure described in WO 03/088760 by which a protein having the profile claimed in claim 37 can be produced.

Accordingly, it is submitted that claims 37 to 39, insofar as they remain in the application and in their amended form, are patentable over WO 03/088760 and hence the rejection thereof under 35 USC 102(a) or, in the alternative, under 35 USC 103(a), should be withdrawn.

The Examiner rejected claims 37 to 39 under 35 USC 102(a) as being anticipated by or, in the alternative, under 35 USC 103(a) as being obvious over WO 02/089597. Reconsideration is requested having regard to the amended form of the claims and the remarks herein.

In discussing WO 02/089,597, the Examiner notes that the reference describes a canola protein isolate having a protein content of at least about 90 wt%, referring to page 36. The Examiner observes that:

> "The protein profile is not given and neither does the Office have the resources to manufacture prior art products and make such comparisons. That burden is being shifted to applicant to determine whether the protein product is the same or is obvious over the claimed product."

WO 02/089,597 describes the production of a canola protein isolate by a procedure which involves extracting canola protein from canola oil seed meal, separating the resulting aqueous canola protein solution from the residual oil seed meal, concentrating the separated aqueous canola protein solution to a concentration of at least about 200 g/L, adding the concentrated protein solution to chilled water having a temperature below about 15°C to form protein micelles, which are settled to provide a protein micellar mass (PMM). The PMM is separated from supernatant and dried (see e.g. the Abstract).

As the Examiner correctly observes, the reference does not provide any protein profile analysis of the PMM. The canola protein isolate that is defined in claim 38 is formed by a similar process to that of WO 02/089,597, except that the

steps of micelle formation and collecting are not carried out, but rather the concentrated canola protein solution is directly dried to provide the canola protein isolate having the recited protein profile.

With respect to the protein profile of the PMM product in WO 02/089597, reference is made to WO 03/088,760 and the discussion above with respect to the distinction of the protein profiles between PMM and what is claimed in claim 38.

Having regard thereto, it is submitted that claims 37 to 39, insofar as they remain in the application in their amended form are not anticipated by nor obvious over WO 02/089597 and hence the rejection thereof under 35 USC 102(a) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over WO 02/089,597, should be withdrawn.

In the Final Action, the Examiner adds some additional remarks with respect to applicants submissions with respect to the prior Office Action. The Examiner states:

> "... the canola protein isolate of the preamble is nonetheless the same, whether the profile was described or not because the profile is an inherent property of the protein isolate and, as can be discerned from claim 38 which is dependent from claim 37 to the same canola protein isolate, the profile can vary according to the procedure and methods used to separate the components. However, it is the same isolate of the preamble, and applicant has not shown this to be otherwise" (Emphasis added).

There are three main proteins of canola, namely a 2S protein, a 7S protein and a 12S protein, as described in WO 03/088,760. This reference shows that the procedure described thereon produces two different canola protein isolates namely one, PMM-derived, which contains the 7S protein as the predominant protein, and the other, supernatant derived, which contains the 2S protein as a predominant protein. While these products are both canola protein isolates, since they comprise canola protein and have a total canola content of at least about 90

wt% (N x 6.25), they are nonetheless different canola protein isolates since their protein profiles are different, leading to different properties.

By the same token, the canola protein isolate claimed in claim 38 while a canola protein isolate since it comprises canola protein and has a protein content of at least about 90 wt% (N x 6.25), is again a different substance from PMM in view of the different protein profiles.

Entry of this Amendment after Final Action is requested, in that the application thereby is placed in condition for allowance. In the event the Examiner considers one or more rejection to still apply, the Amendment nevertheless should be entered, since the issues for appeal thereby are reduced and/or the claims are presented in a better form for appeal.

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,

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